



NEW ARIZONA JUVENILE RULES

Task Force
2019 - 2021

II.

DELINQUENCY

Rules 104 and 110

Scope and Procedures Rules:
201 – 217

Proceedings Rules:
218 – 227

NEW PART I EVIDENCE RULE APPLICABLE TO DELINQUENCY CASES

- ▶ Rule 104. Applicability of the Arizona Rules of Evidence; Admissibility of Evidence and Reports
- ▶ Derived from Current Rules 32(E)(3), Rule 45(A),(B), (C), (D), and (E), 47.3(C), 51(C), 55(D), 56(D), 58(E), 59(D), 60(D), 63(D) and (E), 66(D) and (E), and 77(G).

RULE 104 (CONT'D)

- ▶ Rule 104(d) governs the admissibility of reports.
- ▶ Rule 104(d)(6) provides that the disposition report in a delinquency proceeding is governed by Rule 222.
- ▶ Rule 104(d)(7) provides that the court may admit any other report that is court ordered or required by law, if the report has been timely disclosed and the author of the report is available for cross-examination.
- ▶ Rule 104(d)(8) provides that if the court relies in whole or in part on a report under this section, the report must be admitted into evidence to ensure the report is part of the appellate record.

RULE 104 (CONT'D)

Rule 104 consolidates 17 evidentiary standards from the current Juvenile Rules into one rule, all but the standards set forth in restyled Rule 105(e)(4) (electronically filed or scanned documents considered originals under ARE 1002) and restyled Rule 336(c)(2), derived from Current Rule 53(c), (settlement conference statements not admissible except as provided by ARE 408).

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- ▶ Rule 104(d)(8) provides that if the court relies in whole or in part on a report under this section, the report must be admitted into evidence to ensure the report is part of the appellate record.

RULE 104 (CONT'D)

- ▶ “Available for Cross-Examination” defined in Rule 104(d)(10).
- ▶ A person is available for cross-examination if (1) the person appears in court, (2) the person is available to testify virtually under Rule 110, or (3) the person is subject to the court’s subpoena power, unless the person is unable or unwilling to comply with the subpoena.

RULE 104 (CONT'D)

- ▶ Rule 104(d)(11) (added by the Court) provides that the admission of a report in one proceeding does not create a presumption that it is admissible in other proceedings.
- ▶ Importantly, the comment clarifies that there was no intent to change any ruling on evidence admissibility.

NEW RULE: 201

Scope of the Delinquency Rules

Application. These rules apply to delinquency proceedings in juvenile court.

Incorrigibility. The delinquency rules apply to incorrigibility proceedings.

RULE 202: REFERRAL; DIVERSION

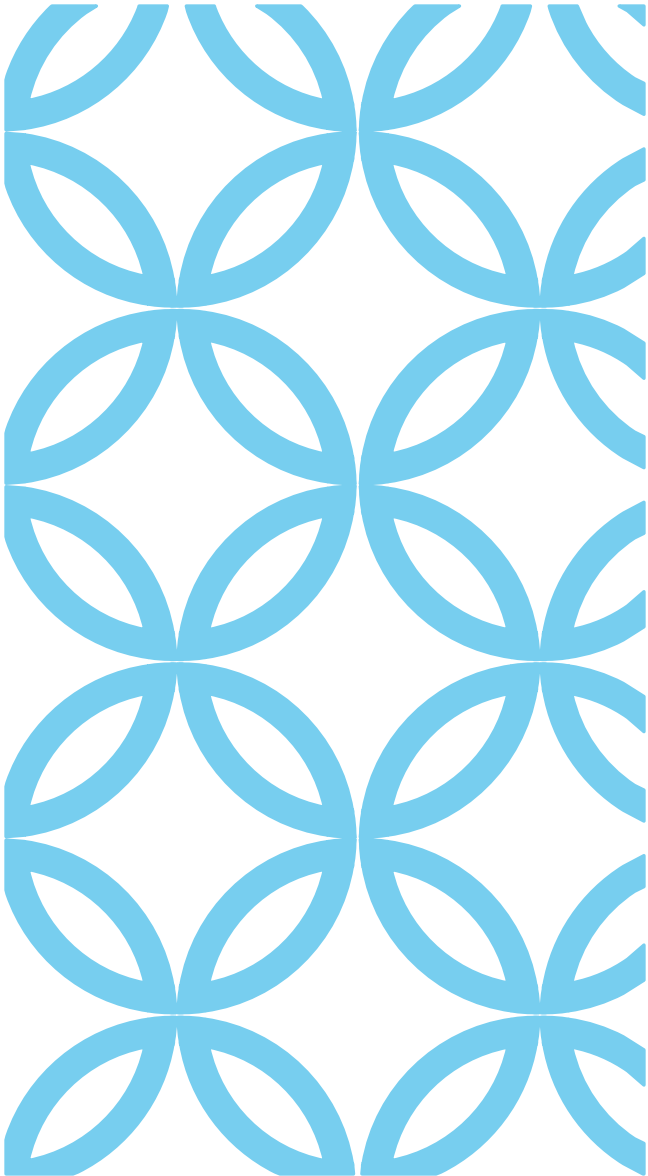
Subsection (d) Expressly allows diversion for a citation.

(e) Meaning. “Diversion” is a way of resolving a referral under A.R.S. § 8-321 *without filing a petition.*

NEW RULE 205: NOTICE TO APPEAR; SERVICE; FAILURE TO APPEAR

(c) Failure to Appear. The court may issue a warrant under this rule *only if the court has found probable cause to believe* that the juvenile has committed an offense alleged in the petition.

- (1) Provisional Warrant.** The court may issue a provisional warrant to ensure the juvenile's appearance. A provisional warrant authorizes a juvenile probation officer or a law enforcement officer to temporarily detain a juvenile for the limited purpose of obtaining a future court date from the court and providing that date to the juvenile. A provisional warrant may also be known as a discretionary warrant, a temporary detention warrant, or by other names.
- (2) Arrest Warrant.** For good cause and in the interests of justice, the court may compel the juvenile's attendance by issuing a warrant for the juvenile's arrest, if it appears the juvenile's failure to appear was willful.
- (3) Contempt.** If, without good cause, a parent fails to appear in court after being served with a notice to appear, the court may set a hearing on an order to show cause why the parent should not be held in contempt. The order to show cause must be served as required under section (b). The parent's failure to appear does not prevent the court from proceeding.



8-221.

A. The court **shall** appoint an **attorney for a child in all delinquency, dependency or termination of parental rights** proceedings that are conducted pursuant to this title. The court shall appoint the attorney before the first hearing. The attorney shall represent the child at all stages of the proceedings and, in a dependency proceeding, through permanency.

STATUTORY CHANGE

RULE 206: APPOINTMENT OF AN ATTORNEY

(a). Right to an Attorney. A juvenile has the right to be represented by an attorney in all delinquency and incorrigibility proceedings initiated by petition or citation as provided by law.

(b) Appointment of an Attorney. The juvenile court must appoint counsel for the juvenile if the court finds that the juvenile is indigent.

RULE 207: ATTORNEY'S APPEARANCE/WITHDRAWAL

(b) Withdrawal.

Court-Appointed Attorney. Unless the court permits otherwise, a court-appointed attorney is automatically relieved of representing a juvenile if no hearings are scheduled and the time for filing a notice of appeal has expired.

Retained Attorney.

Before the Disposition Hearing. A retained attorney may withdraw from a case before the disposition hearing only by motion.

After the Disposition Hearing. A retained attorney may file a notice of withdrawal if no hearings are scheduled and the time for filing a notice of appeal has expired.

RULES 208, 209, AND 110 RE VIRTUAL PROCEEDINGS

- ▶ **Rule 208(b). Virtual Appearance.** If the parties agree and if authorized by the court, the juvenile may make a personal appearance virtually as provided by this rule and Rules 110 and 209.

RULES 208, 209, AND 110 RE VIRTUAL PROCEEDINGS (CONT'D)

► **Rule 209. Virtual Attendance of Witnesses and of Attorneys**

(a) At Adjudication Hearings. All Witnesses must personally appear for adjudication hearings unless the court, after considering the juvenile's constitutional right of confrontation, orders otherwise.

(b) At Other Proceedings. For proceedings other than adjudications, a party may request the court to permit witness testimony or an attorney's appearance by virtual means. Unless the court orders otherwise, the request must be in writing.

RULES 208, 209, AND 110 RE VIRTUAL PROCEEDINGS (CONT'D)

▶ Rule 110. Virtual Proceedings; Declared Emergencies

- ▶ Under the provisions of the rule, evidentiary hearings would presumptively be conducted in person in the absence of an emergency; but during a declared emergency, evidentiary hearings would presumptively be conducted virtually. The rule provides exceptions for overcoming the presumption in either situation.
- ▶ The court must make case-specific findings to overrule an objection to a virtual evidentiary hearing.

RULE 208: JUVENILE ATTENDANCE; COMPETENCY; RESTRAINTS

(e). **Competence.** A juvenile may not participate in a delinquency proceeding if the court determines that the juvenile is not competent. The procedure for making that determination is provided in A.R.S. §§ 8-291 through 8-291.11.

(f). **Mechanical Restraints.**

RULE 212: COMPUTATION OF TIME

Refer to Rule 107 no longer Criminal Rule 1.3, unless these rules state otherwise

RULE 213: SPEEDY JUSTICE

Added the duty for the prosecutor to advise the court of impending expiration of timelines.

RULE 214: VICTIM'S RIGHTS

Victim's rights still apply.

RULE 215: RECORDS AND PROCEEDINGS

- Reorganized
- New term: Dispositional file
 - includes: the dispo. report, attachments to the report, any documents from the legal or social file that were included with the disposition report.
- Dispositional file is confidential

RULE 216: MOTIONS

- Aside from a MTC, a motion must include a memorandum that states facts, arguments, and authorities pertinent to the motion
- Must be filed/served no later than 14 days before a contested hearing
- No later than 5 days after service, any party may file and serve a response, and no later than 3 days after service of the response, the moving party may file and serve a reply
- Party may request oral argument/court may set for argument

RULE 217: MANDATORY JUDICIAL DETERMINATIONS

- Rule 217 pulled from current rule 19.1
- Significantly reorganized
- Easier to follow
- New section (f) – juvenile in a QRTP

RULE 218: DETENTION AND PC HEARING

(c)(2) After a Petition or Criminal Complaint is Filed. No later than 24 hours after the filing of a petition or criminal complaint, a juvenile must be brought before the court for a detention hearing under section (d)..... *If no parent or other responsible person can be located to assume physical custody, the court must release the juvenile to DCS.*

RULE 220: ADMISSION OR CHANGE OF PLEA

- Process for accepting admission/COP
- Now a separate rule
- More robust
- Requires an Immigration admonition

RULE 222: DISPOSITION

The court “may” order probation to prepare a disposition report.

RULE 225: INTERCOUNTY TRANSFERS

A victim may no longer veto a transfer